



NEWS RELEASE

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South Dakota Supreme Court Issues Important Decision on Fairness Tax for South Dakota Retailers

PIERRE, S.D. – Attorney General Marty Jackley announces the State of South Dakota is one step closer to bringing tax fairness to South Dakota retailers which would continue to sustain South Dakota’s status as an income tax-free state. The State Supreme Court agreed with Attorney General Jackley that, despite changing times, the Court was obligated to rule in favor of the defendants in *State of South Dakota v. Wayfair, Overstock and Newegg*. Significantly, the Court’s swift decision recognizes that “as internet sales have risen, state revenues have decreased.” The Court further highlighted the need for the U.S. Supreme Court to revisit this issue, allowing states to require internet retailers to shoulder the same tax burden as in-state retailers do.

“The retail landscape significantly changed with the inception of the internet and access to online shopping. Federal law currently shields out-of-state businesses from paying the same tax remitted by South Dakota businesses. Today’s decision paves the way to respectfully request the U.S. Supreme Court to provide that much needed fairness to save main streets and jobs across South Dakota,” said Jackley.

The prevailing law, as set forth in *Quill Corp v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992), provides that a state cannot require retailers who do not have a “physical presence” in the state to collect and remit the state sales tax. The purpose of South Dakota’s current litigation is to give the United States Supreme Court an opportunity to reconsider *Quill* in light of the extraordinary growth of the internet and the exponential technological advances that have been made in the last quarter century. If the U.S. Supreme Court ultimately strikes down *Quill*, retail sales tax obligation can be applied fairly to both internet and main street businesses.

This case stems from a state law passed in 2016 that would require out-of-state retailers to collect and remit the sales tax similar to in-state retailers. The law applies to out-of-state retailers if they have more than \$100,000 of sales or complete more than 200 sales transactions a year within South Dakota.